

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

APRIL BENZULY,

Plaintiff,

v.

MARCUS THEATRES CORPORATION,

Defendant.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 4:23-CV-953-SRW

**MEMORANDUM AND ORDER**

This matter is before the Court on Plaintiff April Benzuly's Motion for Leave to File her First Amended Complaint to add P-Corn Acquisitions Missouri Corporation as a Defendant in this action. ECF No. 15. Defendant Marcus Theatres Corporation did not file a response and the time for doing so has passed. The parties have consented to the jurisdiction of the undersigned United States Magistrate Judge pursuant to 28 U.S.C. 636(c)(1). For the following reasons, the Court will grant Plaintiff's motion.

**Background**

This action arises from an injury Plaintiff sustained on September 19, 2019 when, she allegedly tripped and fell over a defective sidewalk. Plaintiff initially filed this action in the Circuit Court for St. Louis County, State of Missouri. *See* ECF No. 3. The Petition alleged a personal injury claim against Defendant Marcus Theatres Corporation as the alleged owner or entity responsible for maintaining the premises located at 5320 South Lindbergh Blvd., St. Louis, Missouri 63126. *See id.* The action was subsequently removed to this Court by Defendant.

On August 30, 2023, this Court held a Rule 16 Scheduling Conference with the attorneys for the parties to discuss their proposed Joint Scheduling Plan. ECF No. 13. On the same date, a Case Management Order ("CMO") was issued. ECF No. 14. The CMO provided all deadlines for

this action, including the requirement that any motions for joinder of additional parties or amendment of pleadings must be filed no later than October 13, 2023. *Id.* at 1.

On October 27, 2023, two weeks after the deadline to amend the pleadings, Plaintiff filed the instant Motion for Leave to File her First Amended Complaint. ECF No. 15. Plaintiff indicates that while engaging in discovery, counsel received documents from Defendant Marcus Theatres Corporation indicating that P-Corn Acquisitions Missouri Corporation ("P-Corn") may have also owned and/or maintained the sidewalk where Plaintiff was injured. As such, Plaintiff requests leave to add P-Corn as an additional party to this action.

"Rule 15(a) of the Federal Rules of Civil Procedure governs motions for leave to amend pleadings and generally supports the liberal granting of such motions 'when justice so requires.' Rule 16(b), however, provides that scheduling orders limit the time for amending pleadings and that a schedule established by such an order 'shall not be modified except upon a showing of good cause.'" *Schenk v. Chavis*, 259 F. App'x 905, 907 (8th Cir. 2008). Where a party seeks leave to amend its complaint after the deadline in the case management order has passed, a court is required to apply the good cause standard of Rule 16(b), not the more liberal standard of Rule 15(a). Under Rule 16(b), the party must show good cause in order to be granted leave to amend. *Sherman v. Winco Fireworks, Inc.*, 532 F.3d 709, 716 (8th Cir. 2008); *Popoalii v. Correctional Med. Servs.*, 512 F.3d 488, 497 (8th Cir. 2008). The primary measure of whether good cause exists is the moving party's diligence in trying to meet the order's requirements. *Bradford v. DANA Corp.*, 249 F.3d 807, 809 (8th Cir. 2001).

After giving this matter careful consideration, the Court concludes that Plaintiff has

established good cause to amend. Plaintiff's request appears to be made expeditiously after discovering that a second defendant may also be liable for her alleged injuries. Further, Defendant Marcus Theatres Corporation did not file a motion in opposition to her request. Because Plaintiff will need to serve Defendant P-Corn with process, the Court will vacate the Case Management Order. *See Carmona v. Ross*, 376 F.3d 829, 830 (8th Cir. 2004) (if an amended complaint adds new defendants, the plaintiff gets another 120 days to serve them with process).

Accordingly,

**IT IS HEREBY ORDERED** that Plaintiff's Motion for Leave to File her First Amended Complaint to add P-Corn Acquisitions Missouri Corporation as a Defendant in this action [ECF No. 15] is **GRANTED**.

**IT IS FURTHER ORDERED** that the Clerk of Court shall detach and docket Plaintiff's First Amended Complaint [ECF No. 15-1].

**IT IS FURTHER ORDERED** that Plaintiff shall act promptly to effect service of summons and complaint upon defendant P-Corn Acquisitions Missouri Corporation.

**IT IS FURTHER ORDERED** that, given the addition of P-Corn Acquisitions Missouri Corporation, the Case Management Order [ECF No. 14] is **VACATED** to be reset upon later instruction by the Court.

Dated this 22nd day of November, 2023.

  
STEPHEN R. WELBY  
UNITED STATES MAGISTRATE JUDGE